IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3920 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAFIKBHAI AKBARBHAI SETA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3920 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR SHETH, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/10/2001

ORAL JUDGEMENT

#. The petitioner is a detenu who has been detained under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985. The detention order

dated 17.3.2001 is placed at page 20 of the petition. It has been mentioned in the said order that the petitioner involved in two prohibition cases mentioned at serial nos. 1 and 2. It has been mentioned that the petitioner has indulged himself in the activities of illicit liquor and accordingly he is a bootlegger. It is not in dispute that the petitioner is on bail. However, it is mentioned in the detention order that even after releasing on bail, he continued the said activities, and, therefore, the aforesaid detention order dated 17.3.2001 is passed which is impunged in this petition at the instance of the detenu.

#. At the time of hearing of this petition, it is argued by Mr.Prajapati that the detaining authority has not applied its mind objectively. He submitted that this is not a case in which there is a breach of the public order. He also submitted that the petitioner detenu has made a representation on 19.3.2001. It is argued by Mr.Prajapati that within two days of the detention order, he made a representation to the District Magistrate i.e. on 19.3.2001 which is at page 28. The same was received by the department on 20.3.2001 as per the registered A.D. slip placed at page 30. According to him, therefore, within 2 days from the date of the detention, the said representation was made and the detention order was approved by the State Government on 27.3.2001 which is also produced on record today by Mr.Prajapati. It is argued by him that the said representation was decided on 31.3.2001 which is at Annexure-D to the petition and therefore, there is a delay of about 10 days in disposing the said representation. It is argued that, the representation was made immediately even before the State Government approved the detention order. It was the duty of the District Magistrate to send the said representation to the State Government which is also not done.

#. It is required to be noted that, once a person is detained under the preventive detention, his representation is required to be disposed of at the earliest, otherwise, it can be said that there is a infringement of the provisions of Article 22(5) of the Constitution of India. In the instant case, no affidavit in reply has been filed and there is absolutely no explanation as to why for 12 days the representation was not taken care of. It is required to be noted that the detention order was passed on 17.3.2001 and the State Government approved the said order on 27.3.2001. Therefore, it was the duty of the District Magistrate to forward the aforesaid representation straightway to the

State Government which was not done till the decision was approved by the State Government on the aforesaid date. Apart from that the District Magistrate was entitled to take decision on such representation within 12 days i.e. before the detention order is approved by the State Government, but he has decided the representation on 31.3.2001 i.e. after the same was approved by the State Government. The District Magistrate has not given any explanation as to why the said representation was not disposed of immediately, nor any explanation is given as to why the representation was not sent to the State Government. It is required to be noted that, in any case, the detention order was approved by the State Government on 27.3.2001, and thereafter, it was not open for the District Magistrate even to decide the said representation and such decision would be of no meaning worth the name. It is required to be noted that the detaining authority has no power to take any decision, moment the detention order is confirmed by the State Government and since the representation was not forwarded to the State Government within stipulated time, the detention order is required to be quashed and set aside. Once a person is detained under the preventive detention, all necessary safeguards are required to be complied with strictly, otherwise, such orders are likely to be set aside on the ground of violation of Article 22(5) of the Constitution of India. Even otherwise, regarding delay of 12 days, there is no explanation.

#. In view of what is stated above, the petition is allowed. The order of detention dated 17.3.2001 at Annexure-A is quashed and set aside. The detenu Rafikbhai Akbarbhai Seta is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)